IN THE UNITED STATES DISTRCT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LUMBERLEND COMPANY, LLC. **A Massachusetts Limited Liability Company** **Plaintiff** **v.** **THOMPSON MUG COMPANY, LLC.,** **A Florida Limited Liability Company,** **Randall B. Thompson, John/Jane Doe 1-100** **Defendants**	**No.** **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff **LUMBERLEND COMPANY, LLC**., by and through undersigned counsel, and for its complaint against Defendants alleges as follows:

THE PARTIES

1. Plaintiff Lumberlend Company, LLC. (hereinafter "Lumberlend"), is a Massachusetts limited liability company with a place of business at Concord, Massachusetts. Lumberlend is, and was at all relevant times, the successor in interest and assignee of Lumberlend Company, LLC., a Florida limited liability company (hereinafter "Lumberlend Florida").

2. Defendant Thompson Mug Company, LLC. (hereinafter "TMC") is a Florida limited liability company with a principal place of business at 5138 3rd Ave. N. Saint Petersburg, Florida 33710.

3. Defendant Randall B. Thompson (hereinafter "Thompson") is, and was at all relevant times, an officer, member and control person of TMC and a former member of Lumberlend Florida domiciled at 5138 3rd Ave. N. Saint Petersburg, Florida 33710.

4. Defendants John/Jane Doe 1-100 are the partners and joint venturers of Defendants and/or the officers, members and/or control persons of TMC who names and addresses are presently unknown, but whose identities will be made known through discovery.

JURISDICTION AND VENUE

5. This action arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and under Massachusetts statutory and common law. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1121, 1131, 1332 and 1338. This Court has jurisdiction of Plaintiff's state law claims under 28 U.S.C. § 1367. The amount in controversy exceeds $75,000.00, excluding interest and costs.

6. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants do business in this State and have committed tortious acts in this State, and have otherwise established contacts with this State sufficient to make the exercise of personal jurisdiction proper.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTS COMMON TO ALL CLAIMS

8. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

9. Lumberlend presently owns and operates a Concord, Massachusetts based manufacturing and retail business that sells customized drink containers crafted from baseball bat barrels (hereinafter "Bat Mug(s)"). Lumberlend's Bat Mugs are marketed and sold on Lumberlend's website www.lumberlend.com.

10. Lumberlend's sole member is presently Adam Wnukowski Jr. (hereinafter "Wnukowski").

11. Prior to moving its operations to Massachusetts, Lumberlend was originally formed by Wnukowski and Thompson as a Florida limited liability company for the purpose of manufacturing, marketing and selling Bat Mugs. Lumberlend Florida was organized under the laws of the State of Florida on November 6, 2015.

12. Following the organization of Lumberlend Florida, Wnukowski and Thompson assigned their interests in the Bat Mug to Lumberlend Florida. Lumberlend Florida, as assignee, thereafter filed a patent application (Application Number 29/546,670) concerning the Bat Mug with the United States Patent and Trademark Office on November 24, 2015 (hereinafter the "Patent Application"). A copy of the Patent Application is attached as Exhibit "A".

13. After a few months of operation, Thompson, who was working another job at the time, became disillusioned with the business and agreed to sell his interest in Lumberlend Florida to Wnukowski.

14. Following negotiations between the parties, Wnukowski and Thompson agreed that Wnukowski would acquire Thompson's interest in Lumberlend Florida and relocate the business to Massachusetts.

15. In accordance with his agreement with Thompson, Wnukowski drafted a one-page contract evidencing the sale of Thompson's interest in Lumberlend Florida to Wnukowski. A copy of this contract is attached herewith as Exhibit "B" (hereinafter the "Contract").

16. After drafting the Contract, Wnukowski arranged for a copy of the Contract executed by him to be delivered to Thompson for signature. Thompson signed the Contract and received payment at that time from Wnukowski.

17. As a result of the sale, Wnukowski was the sole remaining member of Lumberlend Florida.

18. After relocating the business to Massachusetts, Lumberlend Florida assigned its interest in all of its assets, including but not limited its ownership of the Bat Mug design, the Bat Mug's distinctive trade dress and its good will, trade secrets, inventions, business processes, website and marketing materials to Wnukowski. Lumberlend Florida was thereafter dissolved in September, 2016. Plaintiff Lumberlend was then organized as a Massachusetts limited liability company and thereafter Wnukowski transferred the aforementioned assets along with his rights under the above-mentioned Contract with Thompson to Lumberlend.

19. As part of Lumberlend's marketing and branding efforts, Lumberlend describes itself on its website as the "home of the original baseball bat mug". This slogan constituted and continues to constitute an integral component of Lumberlend's advertising and branding efforts.

20. Following the execution of the Contract and relocation of the business, Lumberlend spent considerable time, effort and resources developing brand identity and advertising, promoting and offering for the sale its Bat Mugs. As a result of these efforts, Lumberlend's Bat Mug acquired distinctiveness and Lumberlend's Bat Mug developed a reputation among consumers as a high quality, well manufactured, functional and aesthetically pleasing product. During this period, Lumberlend also developed a reputation for quick and efficient order fulfillment and excellent customer service.

21. After taking note of Lumberlend's success, Thompson decided to form TMC in late September, 2016 to compete with Lumberlend and produce, market and sell Bat Mugs. While the Bat Mugs marketed and sold by TMC are of a lessor quality than Lumberlend's Bat Mugs, the TMC Bat Mugs are confusingly similar to Lumberlend's Bat Mugs and are in the manner of the design depicted in aforementioned Patent Application.

22. Hoping to benefit from Lumberlend's marketing efforts, brand and reputation, and in a

willful and intentional attempt to misappropriate Lumberlend's good will, TMC copied portions of Lumberlend's website and slogans and began to advertise itself on its website (thompsonmugco.com) as the "home of the original baseball bat mug". By using this slogan, Defendants likewise hoped to make their customers and potential customers mistakenly believe that TMC was the successor in interest to Lumberlend Florida.

23. Defendants' use of the design of Lumberlend's Bat Mug and its unlawful and deceptive marketing efforts have, as Defendants intended, caused confusion and mistake as to the source of TMC's Bat Mugs and caused harm to the goodwill Lumberlend has developed in its company and in its Bat Mug trade dress. As a direct and proximate result of TMC's and Thompson's aforementioned unlawful actions, Lumberlend has suffered lost sales, loss of business reputation and dilution of its brand and trade dress.

24. Although Thompson had sold all right, title and interest in Lumberlend and its assets, including but not limited to the Bat Mug, to Wnukowski, Thompson and TMC presently take the position that TMC is entitled to continue to market and sell its Bat Mugs as Thompson and Wnukowksi were "joint inventors" of the Bat Mug. Given this stance, Lumberlend is substantially likely to suffer further and irreparable damage as a result of Defendants' illegal activities.

FIRST CAUSE OF ACTION
(False Designation of Origin-15 U.S.C. § 1125(a))

25. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

26. As described above, Lumberlend is the owner of the Trade Dress embodied in its Bat Mug (hereinafter the "Trade Dress"). At no time has Lumberlend, or any person or entity on its behalf, authorized or licensed Defendants to utilize the Trade Dress.

27. The Trade Dress has acquired distinctiveness because it has come to be recognized as a source indicator by the consuming public, who associate the Trade Dress with Lumberlend's Bat Mug.

28. The Trade Dress is not functional.

29. Lumberlend's ownership and use in commerce of the Trade Dress predates the use by TMC of the Trade Dress.

30. Defendants' aforementioned conduct was undertaken as part of a willful and intentional attempt to misappropriate Lumberlend's goodwill.

31. Defendants use the Trade Dress in interstate commerce in connection with offering for sale, selling, distributing and advertising of their Bat Mugs and possibly other like and similar products.

32. Defendants' unauthorized use in commerce of the Trade Dress constitutes a false designation of origin in violation of 15 U.S.C. §1125(a)(1)(A) that is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of TMC with Lumberlend and/or as to the origin, sponsorship, or approval by Lumberlend of TMC's goods, and will irreparably harm Lumberlend and the goodwill that it has developed in the Trade Dress.

33. As a direct and proximate result of Defendants' violations of 15 U.S.C. § 1125(a), Lumberlend has been and will continue to be damaged irreparably.

34. Upon information and belief, Defendants have and/or will soon realize substantial profits and other benefits rightfully belonging to Lumberlend as a result of their wrongful conduct.

35. Defendants conduct is causing and will continue to cause Lumberlend irreparable harm, and unless Defendants are restrained, Lumberlend will continue to be so damaged as Lumberlend has no adequate remedy at law.

SECOND CAUSE OF ACTION
(Dilution-15 U.S.C. § 1125 (c))

36. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

37. As described above, Lumberlend owns valid and existing trade dress rights in the Trade Dress.

38. Through consistent and continued use, product promotion, and customer and industry recognition, the Trade Dress is famous.

39. Defendants did not begin using the Trade Dress until the Trade Dress became famous.

40. Defendants aforementioned conduct was undertaken as part of a willful and intentional attempt to misappropriate Lumberlend's goodwill.

41. Defendants use of the Trade Dress has caused and is likely to continue to cause dilution of the distinctive qualities of the Trade Dress in violation of 15 U.S.C. § 1125(c).

42. As a direct and proximate result of Defendants' willful violations of 15 U.S.C. § 1125(c), Lumberlend has been and will continue to be damaged.

43. Upon information and belief, Defendants have and/or will soon realize substantial profits and other benefits rightfully belonging to Lumberlend as a result of their wrongful conduct.

44. Defendants conduct is causing and will continue to cause Lumberlend irreparable harm, and unless Defendants are restrained, Lumberlend will continue to be so damaged as Lumberlend has no adequate remedy at law.

THIRD CAUSE OF ACTION
(Common Law Trademark Infringement)

45. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

46. Lumberlend is the owner of the Trade Dress embodied in the Bat Mugs.

47. The Trade Dress is distinctive and serves as a source indicator for the consuming public who associate the design with Lumberlend.

48. The Trade Dress is not functional.

49. Lumberlend's ownership and use in commerce of the Trade Dress predates use by Defendants of its confusingly similar design.

50. Defendants willful and intentional use a confusingly similar design in connection with TMC's Bat Mugs constitutes common law trademark infringement as it is without Lumberlend's consent and creates a likelihood of confusion as to source.

51. As a direct and proximate result of Defendants' common law trademark infringement, Lumberlend has been damaged and will continue to be damaged.

52. Upon information and belief, Defendants have and/or will soon realize substantial profits and other benefits rightfully belonging to Lumberlend as a result of their wrongful conduct.

53. Defendants conduct is causing and will continue to cause Lumberlend irreparable harm, and unless Defendants are restrained, Lumberlend will continue to be so damaged as Lumberlend has no adequate remedy at law.

FOURTH CAUSE OF ACTION
(Dilution-Mass. Gen. Laws ch. 110H, §13)

54. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

55. Lumberlend is the owner of the Trade Dress embodied in the Bat Mugs.

56. The Trade Dress is distinctive and serves as a source indicator for the consuming public who associate the design with Lumberlend.

57. The Trade Dress is not functional.

58. Lumberlend's ownership and use in commerce of the Trade Dress predates use by Defendants of Defendants' confusingly similar design.

59. Defendants willful and intentional use a confusingly similar design in connection with TMC's Bat Mugs constitutes dilution as it is without Lumberlend's consent and creates a likelihood of confusion as to source and/or a likelihood of dilution of the distinctive quality of the Trade Dress.

60. As a direct and proximate result of Defendants' dilution, Lumberlend has been damaged and will continue to be damaged.

61. Upon information and belief, Defendants have and/or will soon realize substantial profits and other benefits rightfully belonging to Lumberlend as a result of their wrongful conduct.

62. Defendants conduct is causing and will continue to cause Lumberlend irreparable harm, and unless Defendants are restrained, Lumberlend will continue to be so damaged as Lumberlend has no adequate remedy at law.

FIFTH CAUSE OF ACTION
(Breach of Contract)

63. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

64. Wnukowski has fully performed under the Contract with Thompson to purchase Thompson's membership interest in Lumberlend Florida.

65. The sale of Thompson's interest in Lumberlend included the sale of any rights, title and interest in the assets of Lumberlend, including but not limited to its good will, designs, trade dress, products, knowhow, trade secrets, website, slogans and business methods and strategies. The sale likewise included the implied promise that Thompson would not take any act that would

compete with Lumberlend in such a way as to deprive Lumberlend of its good will.

66. Thompson has breached the Contract as set forth above.

67. As a direct and proximate result of Thompson's breach of contract, Lumberlend suffered loss of business, lost profits, loss of business reputation and other like and serious harm.

SIXTH CAUSE OF ACTION
(Unfair Competition- Mass. Gen. Laws ch. 93A)

68. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

69. Plaintiff and Defendants are persons engaged in the conduct of trade or commerce within the meaning of Mass. Gen. Laws ch. 93A, §11.

70. Defendants aforesaid unfair and deceptive conduct and advertising as described above was willful and intentional and constitute unfair and deceptive business practices and unfair methods of competition under Mass. Gen. Laws ch. 93A.

71. Defendants acts, conduct, and practices described above occurred and are occurring primarily and substantially within the Commonwealth of Massachusetts.

72. Defendants knew that Defendants acts, conduct and practices described above would cause harm to Lumberlend in Massachusetts.

73. In accordance with Mass. Gen. Laws ch. 93A, Defendants are liable to Lumberlend for all damages proximately caused by their unfair and deceptive business practices, including but not limited to the damages set forth above.

74. Lumberlend is further entitled to injunctive relief as well as treble damages and attorney fees pursuant to Mass. Gen. Laws ch. 93A.

SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

75. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

76. Defendants have engaged in a civil conspiracy to unlawfully and unfairly compete with Lumberlend.

77. Defendants agreed to and did work in cooperation to commit all acts complained of above.

78. As a direct and proximate result of said actions, Lumberlend suffered loss of business, lost profits, loss of business reputation and other like and serious harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter judgment in favor of Plaintiff against all Defendants, jointly and severally, for all damages in an amount exceeding $250,000.00 caused by Defendants' actions;

B. Find that Defendants have infringed Plaintiff's Trade Dress;

C. Find that Defendants have violated 15 U.S.C. § 1125(a);

D. Find that Plaintiff's Trade Dress has suffered dilution;

E. Find that Defendants have violated 15 U.S.C. § 1125(c);

F. Find that Thompson knowingly and intentionally breached the Contract;

G. Find that Defendants knowingly and intentionally violated Mass. Gen. Laws 93A;

H. Award Plaintiff actual and treble damages under Federal and Massachusetts State law;

I. Award Plaintiff costs and attorney's fees as allowed under both Federal and Massachusetts law;

J. Preliminarily and permanently enjoin Defendants, and their employees, agents, servants and all in privity with any of them, from using Plaintiff's advertising, slogans or Trade Dress, or any derivation thereof or any design similar thereto, in commerce;

and

K. For such further and additional relief as Plaintiff may be entitled at law or in equity.

LUMBERLEND COMPANY, LLC.
By its attorney

/s/RICHARD B. REILING
RICHARD B. REILING, ESQ.
BBO # 629203
BOTTONE | REILING
63 Atlantic Ave., 3rd Floor
Boston, MA 02110
Phone: (617) 412-4291
Facsimile: (617) 412-4406

JURY DEMAND

Plaintiff demands trial by jury as to all issues herein.

/s/RICHARD B. REILING
RICHARD B. REILING, ESQ.
BBO # 62920